

OPEN SPACE COUNCIL  
MINUTES  
Legislative Hall  
Senate Hearing Room, Second Floor  
Dover, DE  
December 11, 2007  
9:00 a.m.

ATTENDANCE

Council Members:

Lynn W. Williams, Chairperson  
D. Wayne Holden  
Harvey Marvel  
William Powers, Jr.  
John Schroeder

Advisory to:

John A. Hughes, Secretary DNREC

Ex-Officio:

Charles A. Salkin, Parks & Recreation, DNREC  
Michael Scuse, Secretary, DAG  
Tim Slavin, Director, Historical & Cultural Affairs for Secretary of State

Staff:

Matt Chesser, Parks & Recreation, DNREC  
Michael Valenti, Delaware Forest Service, DDA  
Ron Vickers, Parks & Recreation, DNREC  
LeeAnn Walling, Office of the Secretary, DNREC  
Austin Short, Delaware Forest Service, DDA  
Rose Ryödi, Parks & Recreation, DNREC

I. Call to Order/Announcements

Mrs. Lynn Williams, Chairperson, called the Open Space Council meeting to order at 9:10 am. She welcomed Council members and visitors and announced that Mr. Harvey Marvel was reappointed as Council member and was happy to have him for another four years.

II. Review of Minutes of the September 11, 2007 Meeting

Mrs. Williams asked if there were any corrections to the September 11, 2007 minutes. Hearing none she asked for a motion to approve the minutes. It was moved and seconded to accept the minutes as written.

III. Financial Report

Mr. Vickers presented the financial report. The remaining Realty Transfer Tax funds for FY2008 are \$1,784,383.66. There are four previously approved projects totaling \$1,694,000 that are not settled yet. Therefore, the balance available for the remainder of FY2008 is \$90,383.66. The Open Space Program is anticipating a \$2,997,000.00 refund of federally approved reimbursement related to the Coastal and Estuarine Land Conservation Program (CELCP) for the purchase of the Eagle Farms property. This money will not be available until spring of 2008 giving a final total of \$3,087,383.70 for FY2008.

Mr. Vickers said he is attempting to incorporate the CELCP process closely with Open Space Council and staff from the Coastal Management Program may present the CELP process at the March 2008 meeting. Land managing agencies eligible for funding and the Open Space program will come together to provide a list of three or four priority properties to be submitted with the CELP application early spring or summer of 2008. Applications will be rated and ranked by the Federal government and announcements whether funds are appropriated, in November 2008. The Open Space Council may be asked to help prioritize the submitted projects. One CELP application cannot exceed \$3million and one can not apply for more than three projects per year.

The Glatfelter Holdings (1,100 acres), the Glatfelter-Tunnell (420 acres) and the Campanelli (161 acres) projects were settled since the last meeting.

Currently there are no commitments for FY2009 and FY2010 funds.

Mr. Vickers provided an updated Open Space Inventory.

IV. Agency and Public Presentations – Matters Arising

Mrs. Williams said at the September 11, 2007 Council meeting, Council agreed to take a proactive stance in seeking more funding for Open Space. A group of Council members and staff comprising of Mrs. Williams, Mr. Holden, Mr. Schroeder, Ms. Walling, Mr. Salkin, Mr. Vickers and Mr. Chesser are pursuing various options.

Mrs. Williams and Mr. Holden met with Governor Ruth Ann Minner. Mrs. Williams asked the Governor if she would support going to the legislators for more funding. The Governor didn't think this was a good time. She was not particularly supportive of new tax credits, but she was supportive of the transfer of development rights (TDR). The Governor felt involving the Budget Office and Treasurer's Office was important to see if there were any other options. The Governor was cordial and appreciative of what Council was doing.

Mrs. Williams also attended the Department's Budget Hearing and thanked the legislators for their past support.

Based on the Council's recommendation at the September 11, 2007 meeting, Mr. Salkin reported that staff began a process of looking into options for getting more money into the Open Space Program. Various staff and Mr. Schroeder met with members of the Treasurer's Office, including the Deputy Treasurer, and the Budget Office. Some of the discussion was centered on how the Open Space Program funds are invested and whether there was an opportunity to increase returns on these funds. These funds are commingled with other State funds and invested for short-term and long-term returns. The Treasurer's Office will look into any potential for changing the investment strategy. The Budget Office noted that based on revenue projections, there will be very limited funds available for programs, projects and increased funding across state government.

Ms. Walling summarized the discussion regarding the Land & Historic Resources tax credit law. Currently, landowners that donate the fee simple value of their land or a conservation easement to a qualifying organization may take a tax credit on their state income taxes. This credit is limited to 40% of the fair market value of the donation, up to \$50,000. This credit may be used for the year of the donation and up to five additional years for any unused portions of the credit. The tax credit law came into effect on calendar year 2000 and is set to end at the end of 2009. The maximum amount of credit eligible for use in any year is \$1,000,000. Some ideas to maximize the use of this credit are, to raise the individual credit value from \$50,000 to \$100,000, make the value of bargain sales eligible for the credit, extend the time one may use credit up to 15 years, and allow the program to continue beyond 2009.

Mr. Chesser explained a "Transfer of Tax Credit" program used in some other states. This program allows the transfer of conservation easement income tax credits for landowners. Sellers receive immediate cash for their credits and buyers receive discounts on their tax liabilities, up to a certain amount. This option is still to be more fully explored.

Mr. Salkin said another option for getting more funds into the Open Space Program would be to redirect funds from the realty transfer tax that go into the endowment of the Land and Water Conservation Fund (LWCF) to the Open Space Program. Currently, \$10 million of real estate transfer tax revenues is set aside each year. Of this amount \$9 million goes to the Open Space Program for land acquisition and \$1 million goes to the endowment of the LWCF. The LWCF endowment is about \$47 million. The interest generated by the LWCF is used for local park development and acquisition grants (\$750,000 per year) and greenway grants (\$750,000). Any interest generated beyond this \$1.5 million goes into a stewardship account. This account helps the four state agencies that acquire land through the Open Space Program to manage their properties. If the \$1.0million currently going into the LWCF endowment was redirected to the Open Space Program, it would help acquire

more land now. The downside would be that stewardship programs would not have as much funding. This is a trade off in investment-in-future-stewardship vs. investment-in-preserving land today.

Ms. Walling noted there was some risk with bringing up the LWCF in tight budget times. Some folks may look at the \$47.0 million fund as an opportunity for other projects.

Mr. Holden said the tax credit has a cap of \$1 million each year; but only about \$200,000 is taken advantage of leaving \$800,000 of unused incentive credit.

Mr. Slavin reiterated what Mr. Salkin said, adding that the Division of Historical and Cultural Affairs, administers state tax credits for historical preservation with a \$5 million cap and all of it is used each year.

Mr. Holden asked if it was possible to place more than one easement on a property and if this is possible, could it be used as an incentive to get more landowners to consider preservation.

Mrs. Williams asked Council if staff should draft legislation related to changing the tax credit law, review the issue of overlaying easements and provide this information to the public and conservation groups. She also thought the Council and staff should be proactive in encouraging the creation of more land trusts.

Secretary Hughes felt that specific duties should be assigned to staff with accountabilities and a timeline in order to get something accomplished this legislative session.

Ms. Walling thought revisions to the tax credit law were feasible.

Mr. Powers said Council needs to get whatever money it can because it is a depressed market at this time.

Mr. Slavin said Secretary Hughes was right and Council ought to make some sort of decision regarding the tax credit. It is being used minimally today, especially compared to other states.

Mr. Marvel said it seemed logical to bring bargain sales into the tax language.

Mr. Holden said that in looking at the tax credits there are too many encumbrances and road blocks. It should be opened up and Council should encourage people to use it. Knowing that Council will never have enough money to purchase all of the lands that should be protected, Council should facilitate the use of such things as tax credits.

Secretary Hughes requested staff draft proposed changes to the tax credit law and bring it back before the Council at the next meeting.

Mrs. Williams asked for a motion that staff drafts legislation and bring back for review at the next Council meeting on March 11, 2008. Motion was moved and seconded. Motion passed.

Mrs. Williams then asked Secretary Scuse to do a presentation on the Transfer of Development Rights (TDR).

Secretary Scuse reviewed with Council the latest Glatfelter property purchase. It was 1,100 acres costing \$12.8million. Open Space Program contributed \$800,000 and Mt. Cuba Foundation provided a grant for \$10 million and \$2 million came from the Federal Forest Legacy program.

Secretary Scuse noted the Department of Agriculture (DOA) has been working on TDR legislation for about six years with a group chaired by the Lieutenant Governor. He distributed a copy of House Bill 244 which was introduced to the General Assembly last year. It was voted out of committee and is ready for a vote on the floor. The TDR legislation recognizes that the current agland preservation program is limited with only \$10 million earmarked from the Realty Transfer Tax. Just like the Open Space Program, it can only go so far with land preservation purchases. DOA looks at TDR as providing another tool for land protection. Many landowners complain that the current agland preservation program doesn't offer them the value they believe they should be receiving for their lands. The TDR program will put increased value in many of the lands that are remaining in all three counties. The Bill addresses transfer of development rights and the creation of special development districts. It sets up a process for the transfer of development rights and sets up a TDR bank. It also provides for the creation of special development districts which provide for financing for infrastructure for the development of the district which must use TDRs. This legislation is flexible. It gives the Counties the ability to create a TDR bank if they choose. It also gives the Counties the right to pick someone else to work as a bank for them.

Another component of this is that as an extra incentive for the communities and for the counties to create the special development districts and apply TDRs to them, 10% of the sale of the development rights would go back to the municipalities or the counties to help offset some of the additional costs incurred. In order to create a special development district, the entity would work with state agencies to do master plans for community infrastructure. There are few towns that have the ability to sell their farms; namely Dagsboro, Millsboro and Georgetown. Secretary Scuse believes this legislation will help protect and preserve a great deal of remaining lands, plus redirect growth into the areas where Delaware either has the infrastructure or is willing to spend money to put infrastructure in place.

Mrs. Williams asked what the Open Space Council's involvement should be and whether should Council help in educating people about TDRs.

Mr. Powers said education would help to explain TDRs because people are wary of their taxes going up.

Mr. Holden said one way it could be conveyed to the public is to let them know that this helps keep their taxes going up. All taxpayers want to keep their tax payments low. If this is a consequence of this legislation, it becomes easier to sell to the public. Mr. Holden asked whether Council has considered other groups to help. The Nature Conservancy comes to mind as an advocate and also for them to host educational seminars. Perhaps there are other entities Council could request to actively hold educational sessions. He was not sure if it was appropriate for Open Space Council, per se, to be conducting this, but it could certainly act as an advocate.

Secretary Hughes said most people will not understand this Bill because it is difficult to project who will benefit from it and hard to understand, thereby making it tough to pass.

Mrs. Williams asked if Council would support the approach of pulling together a steering committee group to begin planning discussions on how to help educate people about the TDR Bill.

Mr. Powers made a motion that Council support this approach and that Mrs. Williams move forward with whatever appropriate way she needed to implement this program. Mr. Holden seconded the motion.

Mrs. Williams asked if there was any further discussion. Hearing none, she asked for a vote on the motion. The motion passed with a unanimous vote.

V. Executive Session - Discussion of Site Acquisition Contracts

The Council adjourned to Executive Session at 10:45 a.m. to discuss site acquisition contracts. The Council returned to Open Session at 11:40 a.m.

VI. Project Recommendations

Based on discussion in Executive Session, the Council determined the following:

- A. Sohn Property – White Clay Creek SRA: +/- 1.79 acres including forested slopes and an architecturally significant residence. Adjacent property owners interested in protection. Appraisal came in at \$460,000.00. Ideally, need someone who is interested in maintaining residence and also protection for adjacent slope. Seller will continue to market property. It was moved and seconded to reserve up to \$75,000 to explore a full range of protection options with the property owner or potential buyers.

- B. Fox Hall Plantation- Kent County Stand Alone: 4.5 +/- acres protects Maidstone Branch with a forested corridor with remnant historic dam. There is potential to work with a conservation partner. It was moved and seconded to reserve \$10,000 for the project to explore options for permanent protection. Mr. Holden recused himself from voting on this project.
- C. Poplar Thicket- Biffen Company (Niemann) Property – Inland Bays SRA: +/- 92 acres. Conservation land in very developed area. Fronting on Indian River with important wetlands and a National Register site for Early and Late Woodland Period (1400 to 1600). Potential partnership with The Nature Conservancy with adjacent 118 acres. It was recommended staff continue to pursue purchase of the property.
- D. Rustic Lands- Cape Henlopen SRA: +/- 11 acres. Adjacent to 2 parts of Cape Henlopen State Park. Opportunity to maintain historic farm use and develop outreach programs. It was recommended staff continue discussion of all protection options with property owner and bring back to Council at March 2008 meeting.
- E. Bradford/Johnson Property- Kent County Stand Alone: historic 1780 property in downtown Dover on corner of State and Water Street; +/- one acre. Discussions ongoing and not known at this time whether it will be an Open Space project.

Gibraltar property - Mr. Slavin gave an update on the latest proposal for selling the property. Potential purchasers want to add 6,000 square feet of new construction and redesign parking for the conservation easement-restricted property. He is waiting for the latest version of the plan. Property is the subject of a conditional use lawsuit, still owned by Preservation DE and in a deteriorating condition.

#### VI. Next Meeting and Adjournment

Mr. Vickers presented the following dates for the 2008 Open Space Council meetings:

- March 11, 2008
- June 10, 2008
- September 9, 2008
- December 9, 2008

The time and place remain the same – starting at 9:00a.m., at the Legislative Hall, Second Floor, Senate Hearing Room, Dover, Delaware.

The next Open Space Council meeting will be held on Tuesday, March 11, 2008.

Mrs. Williams asked for a motion to adjourn the meeting. Motion was made by Mr. Powers and seconded by Mr. Holden. The meeting adjourned at 11:50 a.m.

Respectfully submitted: Rose Ryödi